IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUMMONS FOR JUDGMENT NO.16 OF 2007
IN
SUMMARY SUIT NO.2197 OF 2006

M/s.Videocon Industries Ltd. ...Plaintiff.
Vs.
Santosh Dubey. ...Defendant.

....

Mr. Lalit V. Jain for the Plaintiff.
Mr. Jayesh Bhatta for the Defendant.

.....

CORAM : DR.D.Y.CHANDRACHUD, J.
26th March 2007.

P.C.:

The Summary Suit under Order 37 of the Code of Civil Procedure, 1908 has been instituted to recover an amount of Rs.1,89,706/- together with future interest from the date of the institution of the suit. The Defendant has been sued in the capacity of a proprietor of a concern by the name of Ajanta Enterprises. The predecessor-in-interest of the Plaintiff, Videocon International Ltd., sold, supplied and delivered to the Defendant, goods of a value of Rs.3,33,666.88. (By a scheme of amalgamation sanctioned by this Court on 25th November 2005 and 6th December 2005, Videocon International Ltd. has been amalgamated with Videocon Industries Ltd. by whom the suit has been instituted). A cheque in

the amount of Rs.3,31,641/- dated 29th December 2003 was issued by the Defendant which has been dishonoured on presentation. A notice of demand dated 28th February 2006 was issued. No reply was furnished to the notice of demand.

The defence is that the Defendant, Santosh Dubey, is not a proprietor of Ajanta Enterprises. However, there is no merit in the aforesaid defence. The Plaintiff has annexed to the Rejoinder at Exh.A, the balance confirmation issued by the Defendant, Santosh Dubey, as the proprietor of Ajanta Enterprises. According to Counsel for the Defendant, the cheque was drawn not by the Defendant, Santosh Dubey, but by Surendra Dubey. However, it is not disputed that the cheque has been sent on behalf of Ajanta Enterprises as a proprietor (authorised signatory). In view of the balance confirmation issued by the Defendant, the Defendant cannot dispute that he has not issued the confirmation as a proprietor of Ajanta Enterprises. According to the Defendant, according to the Books of Account of the Defendant an amount of Rs.10,380.88 only is due and outstanding to the Plaintiff for the Accounting Year 2003-04. If, as the Defendant contends, only an amount of Rs.10,380.88 was due and outstanding to the Plaintiff as

per the Books of Account, there is no explanation as to why part payments were made of Rs.25,000/- each, on 22nd May 2004, 21st June 2004 and 21st June 2004 respectively. Counsel for the Defendant has no explanation for these part payments.

In these circumstances, while I am of the view that the interests of justice require that the Defendant should be given an opportunity to contest on merits, this should have to be subject to condition. Leave to defend the suit is granted to the Defendant conditional on a deposit of an amount of Rs.1,89,070/- within a period of four weeks from today. Upon deposit, the amount shall be invested in a fixed deposit of a Nationalized Bank by the Prothonotary & Senior Master. The Defendant would be at liberty to file a Written Statement within a period of 8 weeks of the order. The suit then shall be transferred to the list of commercial causes.

The Summons for Judgment is accordingly disposed of.

.....